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In re Application of	:	DECISION ON
Neil T. DEAR et al	:	
Application No.: 10/009,571	:	
PCT No.: PCT/EP00/05261	:	
Int. Filing Date: 07 June 2000	:	PETITION UNDER
Priority Date: 18 June 1999	:	
Attorney's Docket No.: NA	:	
For: NOVEL CALPAINS AND THE USE THEROF	:	37 CFR 1.181 and 1.137(b)

This decision is in response to applicants' "Fax Transmittal Sheet," faxed on 20 September 2005.

### **BACKGROUND**

On 07 June 2000, this international application was filed, claiming an earliest priority date of 18 June 1999.

The deadline for paying the basic national fee in the United States under 35 U.S.C. 371 was 18 December 2001.

On 12 December 2001, applicants filed a Transmittal letter for entry into the national stage in the United States, which was accompanied by, basic national fee. No executed declaration or oath was filed at such time.

On 12 March 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) that the oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by international application number and international filing date must be submitted within a two months time limit or 32 months from the priority date for the application, whichever is later to respond. Failure to properly respond will result in abandonment.

On 10 May 2002, applicant responded to the Notification accompanied by a declaration.

On 10 February 2003, the USPTO mailed a Notification of Defective Response indicating that the current oath or declaration is not executed in accordance with either 37 CFR 1.68 or 37 CFR 1.68, and the declaration has not been executed by all inventors who are listed on the International Application.

On 17 March 2003, applicant responded to the Notification with a "RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE" accompanied by an executed Declaration and Power of Attorney.

On 12 December 2003, the USPTO mailed a Notification of Defective Response Abandonment indicating that the executed declaration did not identify the citizenship of each inventor.

On 20 September 2005, applicants faxed this transmittal sheet indicating that a petition for revival and another executed declaration were filed on 03 March 2004 as evidenced by the postcard.

### DISCUSSION

#### PETITION UNDER 1.181

Applicant's present petition accompanied by a copy of the following documents, filed purportedly, *inter alia*, with the PTO as indicated in the stamped postcard:

- (1) Petition for Revival
- (2) Notification of Defective Response Abandonment
- (3) Declaration and Power of Attorney

The postcard lists the above items and bears a USPTO date of stamp as 03 March 2004.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that a Petition for Revival and an Executed Declaration was deposited with the U.S. Patent and Trademark Office on 03 March 2004.

The petition under 37 CFR 1.181 is GRANTED.

#### PETITION UNDER 1.137(b)

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a

grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting a proper executed declaration, (2) the petition fee set forth in § 1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

### **DECISION**

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371(c)(1), (c)(2), and (c)(4) date of this application is **03 March 2004**.



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